

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6017 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

G.S.R.T.

Versus

PARSHOTTAM PREMJI TANK

Appearance:

MR HC Raval for Petitioner
NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 22/09/1999

ORAL JUDGEMENT

By way of this petition under Article 227 of the Constitution of India, the petitioner Corporation has challenged the order dated 1.1.1986 passed by the Labour Court, Rajkot in Reference (LCR) No.975/1983.

The facts leading to the filing of the present

petition in short, are that the respondent was working as Conductor in Amreli Depot in Amreli with the petitioner Corporation. While working as such, while he was on route from Nanodi to Visavadar on 7.12.1979, his bus was checked by the Checking Party and it was found that he had collected fare from the passengers but had not issued tickets to them till the time when the bus was checked and that the respondent had not issued tickets to 27 passengers. Regular Departmental Inquiry was held against him. It was found that the bus was a Local Bus where road booking was prohibited and out of 52 passengers, 27 passengers were found to have paid the fare but tickets were not issued to them and the bus had travelled 8 kilometers. At the end of the departmental inquiry, the respondent workman was dismissed from service by order dated 16.10.1980 which action of the petitioner Corporation was challenged by the respondent workman before the Labour Court, Rajkot by filing the aforesaid reference. The Labour Court, under its impugned award dated 1st December, 1986 set aside the order of dismissal and directed reinstatement of the respondent workman with continuity of service and 50% of backwages. Feeling aggrieved by the said award passed by the Labour Court, the petitioner has filed the present petition.

This Court while admitting this petition, has stayed the payment of back wages and in so far as reinstatement is concerned, this Court has not granted any interim relief. The respondent has been served but has not appeared before this Court.

The Labour Court has considered the evidence on record and has discussed the same at length in the impugned award. At the time of checking, there were about 79 passengers in the bus and the respondent was doing road booking. The respondent had issued 52 tickets within the distance of 8 kilometers and at the time of checking road booking was going on. It was alleged against the respondent that he had recovered an amount of fare from three passengers travelling from Khambha to Hingora. It was the defence of the respondent that he had recovered fare and he was about to issue the tickets to the remaining passengers and meanwhile the bus was checked. The Labour Court has considered the evidence. The Labour Court observed that the statements of the passengers were obtained by the Checking Party in crystal manner and only signatures were obtained by the Checking Staff from the passengers. However, during the course of departmental inquiry, the passengers whose statements were recorded were not examined before the Disciplinary

Authority and except Reporter noone was examined during the course of the departmental inquiry and the Competent Authority has not given any reason in support of its conclusions. The Labour Court also observed that the impugned order of punishment was passed on the basis of presumption that recovery of fare from three passengers would amount to misappropriation of the funds of the Corporation but the defence of the workman was not at all considered by the competent authority. The Labour Court further came to the conclusion that there was no reliable evidence produced by the reporter in support of the charge of misappropriation levelled against the respondent workman. Before the Labour Court, the Respondent was examined vide Exh.6 and has proved his unemployment during the intervening period and the petitioner has not proved the gainful employment of the respondent workman. The past record of the workman was also considered by the Labour Court.

In this case, the misconduct for which the extreme punishment visited the worker is causing a very negligible loss to the employer. A serious question that arises in such cases would be, besides the legality of the punishment, the morality of imposing such a severe punishment as well. While imposing a punishment the employer should first consider whether the delinquent committed the offence with intent to make unlawful gain and to pilfer the revenue of the employer. Was it with intention to gain paise that the worker committed the present misconduct? Was he in such a depraved circumstances that he desired to make an illegal gain of a trivial amount of paise? What was the number of passengers travelling in the bus and is it possible that he would have accidentally omitted to issue tickets? Is it not possible that while he was in the process of issuing tickets, some persons have boarded the bus? Several cases we come across, such omission takes place in buses loaded with more than the permitted number of passengers. Such may be cases of human error committed by the Conductor while issuing tickets to passengers much more than the permitted number. The disciplinary authority should keep in mind all facts of the problem before it awards the extreme penalty of dismissal.

A misconduct like the above on several instances is not committed insistentionally. It is to much to imagine that a worker would have omitted to issue tickets deliberately to gain of rupees at the risk of his job. More often, it is due to the crowd in the bus that he misses to issue tickets than a desire by him to gain few rupees. The castastrophe that may befall is more serious

than what is sought to be prevented. First it visits the employee. He is rendered jobless. It generates a litigation which in the present pattern spreads over years producing ultimately a disgruntled employee. Actually the real victim of any such punishment is the family of the worker whose bread winner is jobless. The future is rendered bleak to them and it in its turn causes greater hardship to the society than it intended to cure.

That apart, the management also shares the losses in another way. When the worker is dismissed, someone else will have to be placed in his place to discharge the duties. And if the worker is ordered to be reinstated ultimately with back-wages, virtually there will be double payment i.e. two persons, would have to be paid for a single job. In the case of a public sector undertaking, the loss is passed on to the common man, the tax payer.

The question then would be in the case of a conductor (as in the instant case) who has a past history, should the employer ignore the same? This is a case, the remedy for which the employer himself should discover and the solution is not far to discover. In the case of a ticketless traveller the management has designed a method to curb the same by imposing fine on them. The object with which this is done is so that he may not repeat travelling in the bus without tickets. This method can certainly be considered of imposing of penalty on the Conductor himself which is discovered to be intentionally pilfering the revenue of the Corporation.

We may notice that in all these cases of non-issue of tickets, we may take note of the fact that there are two parties joining to commit the misconduct, i.e. the Conductor and the passenger. If the Conductor wants to make an unlawful gain, then he has to collect the fare and fail to issue tickets. In such an event, the passenger who boards the bus must co-operate with the Conductor. If he has to co-operate, then he should be familiar to the Conductor and he should agreed to be a party to commit the misconduct at the risk of paying penalty in the event of being caught by the Inspecting Staff. It is too much to imagine that the conductor will hatch a conspiracy to pilfer revenue of the Corporation as and when stray passengers board the bus at various stages. If the Conductor wants to make an illegal gain by the omission to issue tickets, the passenger has to be condescending party. This is really unlikely. Hence,

the benefit of doubt in cases of stray lapses should be that the omission to issue tickets may be accidental.

Hence, the disciplinary authority should reserve the punishment of dismissal only in extreme cases. It is where the exercise of discretion by the disciplinary authority steps in. It cannot and should not act like a robot, its justice should be moulded with humanism and understanding. It should really assess each case on its own merit. The fact that on a past occasion the delinquent might have acted in a particular manner does not mean that on the particular occasion as well he would have acted with intent to cause loss to the employer. Each set of facts should be decided with reference to evidence regarding the said allegations and those allegations should be on the basis of the decision. Maybe, the past conduct of the worker may be a ground to assume that the delinquent may have had propensity to commit the misconduct and to assess the quantum of punishment to be imposed. But that by itself cannot provide any foundation to hold that the present conduct of the worker is a misconduct.

In this case admittedly there is default numbering 8 with respect to which the employer had occasion to impose punishment. This is not a disputed fact as well. Maybe the charges with respect to the above said default would be innocuous or minor. In several cases it may not be the intention of the petitioner to commit any misconduct. He might have admitted the guilt as well to avoid protracted proceedings. As can be seen from the history sheet produced, in several cases, one or two passengers were not issued with tickets. One cannot say that this was done with the intention of gaining the money involved. If so, it would be harsh to take those circumstances as well while moulding the punishment. But it must be stated that in this case the facts clearly spell out that the worker had been negligent in discharging his duties. Hence the Labour Court will be justified in awarding 50% backwages to the worker who has shown total indifference to his duties.

I have perused the impugned award and past record of the workman. In all, eight defaults were committed by the workman. In first, second and fourth default the workman was given warning and in so far as third default is concerned, fine was imposed. In fifth default, one month increment was stopped and in sixth default, an amount of Rs.16.25 ps. was recovered from the respondent

workman by way of penalty. Default no.7 relates to warning and Default no.8 relates to punishment of stoppage of three months increments without cumulative effect. The Labour Court has also considered that the respondent workman had completed 10 years of service on the date of dismissal. Now, looking to the service record and the period of service rendered by the respondent workman, the Labour Court has passed the award with due application of mind and has given reasons in support of its conclusion that the findings given by the competent authority are vitiated and the charges levelled against the respondent workman were not found to have been proved and therefore, the findings are baseless and perverse. The Labour Court has further considered the fact that at the time of checking there were 24 passengers without tickets which is negligent on the part of the respondent workman. Taking into consideration all these aspects of the matter, the Labour Court passed the impugned order directing the Corporation to reinstate the respondent workman. The Labour Court however, denied 50% of the back wages by way of penalty for negligence in not issuing tickets to 24 passengers. This order was passed by the Labour Court while exercising powers under Section 11 A of the I.D.Act on the basis that the impugned order of punishment is harsh, unjustified and disproportionate to the charge levelled against the workman. In case of Jitendrasinh Rathod reported in AIR 1984 SC 976, the Apex Court has held that where the Tribunal had under its award directed reinstatement and withheld payment of half of the back wages in view of the misconduct levelled against the delinquent, the order of the High Court in exercise of powers under Article 227 of the Constitution quashing the reinstatement and awarding compensation was improper when the High Court do not record finding to the effect that there was loss of confidence and there was no indication in the judgement of the High Court as to how many years of service, the employee has put. The Apex Court has further held that the discretion has been vested in the Tribunal under Section 11-A of the I.D.Act. The High Court under Article 227 of the Constitution does not enjoy such power though Superior Court.

In view of the decision as aforesaid and the findings given by the Labour Court while exercising powers under Section 11-A of the I.D.Act. I am of the opinion that the Labour Court is justified in directing the reinstatement of the workman with 50% of the back wages and in denying remaining 50% of back wages to the workman. The Labour Court has not committed any error. Mr.Raval for the petitioner has not been able to point out any infirmity in the impugned award and therefore,

the present petition is required to be dismissed. Same is accordingly dismissed. Rule is discharged. Interim relief granted earlier shall stand vacated with no order as to costs.

This being an old matter and since I have dismissed this petition, the petitioner Corporation is directed to implement the impugned award passed by the Labour Court and make payment of back wages to the respondent workman within three months from the date of receipt of this order.

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